

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KRISTEN ARMENDARIZ,

Plaintiff,

vs.

Civ. No. 98-1309 LH/WWD

CITY OF ALBUQUERQUE POLICE
DEPARTMENT,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiff's Motion to Compel and For Sanctions (docket no. 84). Plaintiff seeks the production of a tape which allegedly represents a conversation between the Plaintiff and her doctor while Plaintiff was on duty and while she was on a taped 911 phone line.

Despite arguing that in the taped conversation "Armendariz attempts to convince her doctor to fabricate a reason to substantiate her request for leave under the Family Medical Leave Act," Defendant argues that it was not required to produce a copy of the tape since it would not be relevant to this case. Defendant's rationale is that since the conversation took place "approximately eleven months after she [Plaintiff] filed her Complaint and after the close of discovery", and since Plaintiff "cannot present evidence at trial regarding acts of alleged retaliation which occurred after she filed her complaint", "the tape is irrelevant and not likely to lead to the discovery of admissible evidence in this case."

Plaintiff argues that she is entitled to this “statement” by her under Fed. R. Civ. P. 26(b)(3). Plaintiff, who declined to obtain a copy of the tape under the New Mexico Inspection of Public Records Act, also seeks sanctions against Defendant for its failure to produce the tape.

If the tape could be relevant, it should be produced. On the other hand, if it is not relevant, it should not be produced, and it should be excluded from the trial. I have obtained from Judge Hansen his approval to proceed as indicated in the preceding sentences.

WHEREFORE,

IT IS ORDERED that on or before December 6, 1999, Defendant shall deliver to the undersigned a copy of the aforementioned tape for an *in camera* inspection.

IT IS FURTHER ORDERED that determination of this motion will be deferred until the *in camera* inspection of the tape in question is made.


UNITED STATES MAGISTRATE JUDGE